INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statute involved	2
Statement	2
Argument	6
Conclusion	11
Appendix	12

CITATIONS

Cases:

Bessette v. *W. B. Conkey Co.*, 194 U.S. 324	10
Eilenbecker v. *Plymouth County*, 134 U.S. 31	10
Gompers v. *Bucks Stove & Range Co.*, 221 U.S. 418	10
Hoffman v. *United States*, 341 U.S. 479	9
Jarecki v. *Whetstone*, 82 F. Supp. 367	3
Jarecki v. *Whetstone*, 192 F. 2d 121	4
Maggio v. *Zeitz*, 333 U.S. 56	10
McCrone v. *United States*, 307 U.S. 61	10
Murray's Lessee v. *Hoboken Land & Improvement Co.*, 18 How. 272	8
O'Connell v. *United States*, 40 F. 2d 201	9
Oriel v. *Russell*, 278 U.S. 358	10
Penfield Co. v. *Securities and Exchange Commission*, 330 U.S. 585	10
Terminal R. R. Assn. v. *United States*, 266 U.S. 17	10
United States v. *Mine Workers*, 330 U.S. 258	10
Whetstone v. *United States*, 82 F. Supp. 478, affirmed April 28, 1949, certiorari denied, 337 U.S. 941, rehearing denied, 338 U.S. 840	4, 6

Statutes:

Internal Revenue Code:	
Sec. 276 (26 U.S.C. 1946 ed., Sec. 276)	3
Sec. 3615 (26 U.S.C. 1946 ed., Sec. 3615)	7, 10, 12
Sec. 3633 (26 U.S.C. 1946 ed., Sec. 3633)	10, 14
Sec. 3651 (26 U.S.C. 1946 ed., Sec. 3651)	14
Sec. 3654 (26 U.S.C. 1946 ed., Sec. 3654)	7, 14
Sec. 3711 (26 U.S.C. 1946 ed., Sec. 3711)	10, 15
18 U.S.C., Sec. 401, formerly 28 U.S.C. (1946 ed.) Sec. 385	10

In the Supreme Court of the United States

OCTOBER TERM, 1952

No. 490

IRENE B. WHETSTONE, PETITIONER

v.

ERNEST J. SAUBER, DIRECTOR OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The order of the district court committing the petitioner for contempt (R. 58-60) is not reported. An earlier opinion of the district court treating many of the issues herein is reported at 82 F. Supp. 367. The opinion of the court of appeals (R. 115-120) is not yet reported.

JURISDICTION

The judgment of the court of appeals (R. 121) was entered on October 16, 1952. A petition for rehearing filed October 31, 1952 (R. 121), was denied

on November 8, 1952 (R. 122). The petition for a writ of certiorari was filed on December 8, 1952. The jurisdiction of this Court is invoked under 28 U. S. C., Section 1254.

QUESTION PRESENTED

The question presented is whether, under the particular facts here involved, the district court had authority to commit the petitioner taxpayer for contempt until she should obey its order directing her to appear before the Collector (now Director) of Internal Revenue with her books and records and to give testimony in connection with the latter official's effort to collect from her the unpaid balance of her federal income tax for the calendar year 1944.

STATUTE INVOLVED

The applicable provisions of the Internal Revenue Code are printed in the Appendix, *infra*, pp. 12-15.

STATEMENT

On January 5, 1948, John T. Jarecki, then Collector of Internal Revenue for the First District of Illinois,[1] filed a petition in the United States District Court for the Northern District of Illinois in which he alleged that on November 3, 1947, a collector's summons, issued pursuant to Sections 3615 and 3654 of the Internal Revenue Code, had been served upon the petitioner Irene B. Whetstone,

[1] John T. Jarecki has been succeeded in his official position by Ernest J. Sauber, whose title is Director of Internal Revenue, Chicago. Director Sauber was substituted as plaintiff-appellee in the court below. (R. 102-103, 112.)

summoning her to appear before him on November 17, 1947, and to testify and to produce books and records, in aid of an investigation pertaining to the collection of her income tax for the year 1944. The petition further alleged that the taxpayer Whetstone had full knowledge of the obligations imposed upon her by such summons and the necessity for obedience on her part, but that, regardless of such knowledge, she failed to appear at the time and place designated in the summons, and did not on that date or at any time thereafter appear and give any cause or reason for her failure to appear. The petition was accompanied by appropriate supporting documents.[2] (R. 6-9.)

A writ of attachment was issued the same day, January 5, 1948, and was executed January 6, 1948. After hearing, the cause was continued and the taxpayer was released on her own recognizance. (R. 2, 10-12.)

On January 23, 1948, the taxpayer filed a motion to dismiss the Collector's petition, which motion was denied on November 15, 1948 (*Jarecki* v. *Whetstone,* 82 F. Supp. 367 (N.D. Ill.)), and on December 2, 1948, the taxpayer filed her answer. (R. 2-3.) On May 3, 1949, the district court, on motion of the Collector, entered an order (R. 19-21)

[2] The tax here involved was a part of the income tax shown on petitioner's return for 1944 and was duly assessed by the Commissioner of Internal Revenue on July 14, 1945. On June 29, 1952, within the time required by Section 276(c) of the Internal Revenue Code, the United States filed a suit against the petitioner in the District Court for the Northern District of Illinois (*United States* v. *Irene B. Whetstone,* No. 51 C 1057) to collect this tax, which suit is still pending.

directing the taxpayer to appear before the Collector with her books and records on a day specified therein and to give testimony with respect to the Collector's efforts to collect the unpaid balance of her 1944 income tax liability. This order was vacated, without objection by the Collector, on May 6, 1949.[3] On February 12, 1951, the district court granted a motion by the Collector to reinstate the order of May 3, 1949, with appropriate changes with respect to dates and place for the taxpayer's appearance, and ordered the taxpayer to appear before the Collector on February 23, 1951, with her books and records and to give testimony on all matters and facts within her knowledge in connection with the Collector's efforts to collect her 1944 income tax. (R. 12-13.) The taxpayer appealed from that order and, after ordering a stay of execution, the Court of Appeals for the Seventh Circuit in an opinion entered November 6, 1951, held that the order of February 12, 1951, was an interlocutory order from which appeal would not lie. *Jarecki* v. *Whetstone,* 192 F. 2d 121. It therefore dismissed the appeal and vacated its order staying proceedings in the district court. (R. 17.)

---

[3] The Collector did not object to the vacating of this order because of the pendency of a refund suit involving 1944 and other years which the taxpayer brought subsequent to the filing of the petition in this proceeding. See *Whetstone* v. *United States*, 82 F. Supp. 478 (N.D. Ill.), affirmed without opinion, April 28, 1949 (C.A. 7th), certiorari denied, 337 U.S. 941, rehearing denied, 338 U.S. 840. Further delay in obtaining reinstatement of the order of May 3, 1949, was due primarily to other litigation subsequently instituted by the taxpayer. The opinion below sets forth this ancillary litigation (R. 118, n. 3).

Following the issuance of the mandate of the court of appeals, the district court, on January 15, 1952, on motion of the Collector, entered an order reinstating the order of February 12, 1951, with appropriate changes with respect to the dates and place for the taxpayer's appearance, and ordered her to appear before the Collector at his office on January 18, 1952, with all books and records in her possession which would disclose her personal financial condition, and to give testimony on all matters within her knowledge with respect to the Collector's efforts to collect her 1944 income tax. The parties were directed to appear in court on January 21, 1952, and report on whether the taxpayer had complied with the court's order. (R. 36-39.)

On January 22, 1952, the Collector filed a motion in the district court (R. 40-42) in which he stated that the taxpayer had not appeared before him nor testified nor produced her books and records as required by the order of January 15, 1952, and asked that she be adjudged in contempt and punished, for civil contempt, for disobedience to the court's order. On January 24, 1952, the taxpayer filed lengthy objections to the Collector's motion (R. 42-48), and a hearing was had on the motion on January 30, 1952 (R. 48-57). At this hearing, the taxpayer refused to be sworn and testify, and also announced her refusal to appear before the Collector and to give testimony as ordered on January 15, 1952. (R. 52-53) The district court thereupon entered an order (R. 58-60) in

which it found that the taxpayer's failure and refusal to comply with the order of January 15, 1952, was without just cause, and that by her refusal to obey that order, she was in contempt of court. Accordingly, the district court ordered that the taxpayer be committed to the custody of the Attorney General of the United States until she should purge herself of that contempt by complying with the court's order.

The Court of Appeals for the Seventh Circuit sustained the district court's order of commitment for contempt of court. (R. 115-120.) It is review of this affirmance which is sought by the petition for writ of certiorari.

ARGUMENT

This case presents no ground which would warrant the granting of a writ of certiorari. The prolixity of taxpayer's statement of the questions presented (Pet. 13-19) and of her discussion of the reasons relied upon for the granting of a writ (Pet. 20-37) makes it inordinately difficult to determine what her grievance is. Scanned with care, it seems to be simply that she does not want to furnish information which will enable the Government to collect the unpaid balance of her 1944 income tax,[4] and does not want to be committed for contempt of court on account of her refusal to fur-

[4] Petitioner's principal objection to the payment of her tax is that the revenue turned over to the Treasury from the collection of taxes is allegedly being expended for seven purposes, all of which are claimed to be outside the purview of the Constitution. *Whetstone* v. *United States*, 82 F. Supp. 478, 479; see also record on petition for writ of certiorari, No. 826, 1948 Term.

nish that information upon order of the district court. But the district court had unquestionable jurisdiction to enter the order of January 15, 1952, which directed her to appear before the Collector with her books and records and to give testimony concerning her finances which would aid the Collector in his efforts to collect this unpaid tax. And, since the taxpayer defiantly refused to comply with that order, without good cause shown, the district court clearly had the power to have her committed until she should purge herself of the contempt by complying with the order.

Section 3654(a) of the Internal Revenue Code (Appendix, *infra*, pp. 14-15) requires Collectors to see that within their collection districts all laws and regulations relating to the collection of internal revenue taxes are complied with, and in aid thereof authorizes them to issue a summons such as was issued in the instant case. Section 3615(a) of the Code (Appendix, *infra*, p. 12) provides general authority for Collectors to issue a summons, and Section 3615(e) (Appendix, *infra*, pp. 13-14) provides for enforcement of the summons in the manner here adopted, when the person summoned fails or refuses to obey the Collector's summons.

The petition filed in the district court in this case by the Collector (R. 6-7) alleged the issuance and service of the summons and the taxpayer's failure or refusal to comply with it. It asked that the taxpayer be brought before the court to show cause why she should not be committed for contempt for failure to comply with the summons, and for "such

other and further relief in the premises as to this Court shall seem meet" (R. 7). At the hearing before the district court, taxpayer not only announced her refusal to comply with the Collector's summons, but also refused to be sworn and testify in the court (R. 52-53). Taxpayer was thereupon committed until she should comply with the order of the court.[5]

There is no merit to the contention that the court's order of January 15, 1952, violates any of the privileges and immunities guaranteed to the taxpayer by the Fourth and Fifth Amendments to the Constitution. Since the decision of this Court in *Murray's Lessee* v. *Hoboken Land & Improvement Co.,* 18 How. 272, the courts have uniformly recognized the right of the United States to collect its internal revenue by summary process. Sections 3615 and 3654 comprise a part of the statutory system governing such summary collection. The authority vested in the courts and in Collectors of Internal Revenue by these and other provisions of the internal revenue laws, in aid of such summary collection, is entirely reasonable.

The Collector's summons and the order of January 15, 1952, which are in full accordance with the statute, do not authorize any unreasonable search or seizure. Neither do they violate the taxpayer's

---

[5] There is no basis for taxpayer's statement (Pet. 30) that she "was never ordered by the District court to comply with the collector's summons." The order of January 15, 1952, as well as the order of February 12, 1951, from which the first appeal was taken, could not be construed in any other conceivable way.

constitutional privilege against self-incrimination. The mere summoning of a witness provides no basis for assuming that his constitutional privilege will be impaired. "His duty is to answer frankly until some question is propounded, the answer to which might tend to self-incrimination." *O'Connell* v. *United States,* 40 F. 2d 201, 205 (C. A. 2d). As this Court pointed out in *Hoffman* v. *United States,* 341 U. S. 479, 486, the protection against self-incrimination must be confined to instances where the witness has reasonable cause to apprehend danger from a direct answer, and—

> The witness is not exonerated from answering merely because he declares that in so doing he would incriminate himself—his say-so does not of itself establish the hazard of incrimination. It is for the court to say whether his silence is justified, *Rogers* v. *United States,* 340 U. S. 367 (1951), and to require him to answer if "it clearly appears to the court that he is mistaken." *Temple* v. *Commonwealth,* 75 Va. 892, 899 (1881).

Consequently, until the taxpayer appears in response to the order of January 15, 1952, there is no basis for saying that any of her constitutional rights might be violated. Because of her refusal to obey the order of January 15, 1952, the district court was fully justified in taking the measures it did.

Taxpayer has also misconceived the nature of the order of commitment. Her entire argument seems to be based upon the theory that the district

court ordered her committed as punishment for a criminal contempt. However vague and shadowy the line between civil and criminal contempts in other situations may be, see *Bessette* v. *W. B. Conkey Co.*, 194 U. S. 324, 329; *Gompers* v. *Bucks Stove & Range Co.*, 221 U. S. 418, 441-442; *Terminal R. R. Assn.* v. *United States*, 266 U. S. 17; *Oriel* v. *Russell*, 278 U. S. 358; *United States* v. *Mine Workers*, 330 U. S. 258, 298-299; *Penfield Co.* v. *Securities and Exchange Commission*, 330 U. S. 585; *Maggio* v. *Zeitz*, 333 U. S. 56, 67-69, this is the classic case of commitment for civil contempt for the purpose of enforcing the court's order. *McCrone* v. *United States*, 307 U. S. 61.

Equally lacking in merit is the contention that the district court was without authority to commit for civil contempt because in the revision of Titles 18 and 28 of the United States Code the provision formerly found in Section 385 of Title 28 is now Section 401 of Title 18. Even if this transposition of sections were to be deemed in some way to derogate from the court's statutory authority to enforce its orders, it is elementary that if a court of general jurisdiction has the authority to enter an order it also has the authority to compel compliance with it. *Eilenbecker* v. *Plymouth County*, 134 U. S. 31, 34-40; *Gompers* v. *Buck Stove & Range Co.*, 221 U. S. 418, 450, and cases cited. And in any event, as the court below held (R. 119-120), Sections 3615, 3633 and 3711 of the Internal Revenue Code are in full force and effect, and clearly authorize the procedures of both the Collector and the court.

CONCLUSION

The decision of the court below is clearly correct and is not in conflict with any other appellate court decision. The petition for a writ of certiorari should be denied.

Respectfully submitted,

WALTER J. CUMMINGS, JR.,
Solicitor General.
CHARLES S. LYON,
Assistant Attorney General.
ELLIS N. SLACK,
FRED E. YOUNGMAN,
Special Assistants to the Attorney General.

JANUARY, 1953.

APPENDIX

Internal Revenue Code:

SEC. 3615. SUMMONS FROM COLLECTOR TO PRODUCE BOOKS AND GIVE TESTIMONY.

(a) *General Authority.*—It shall be lawful for the collector, subject to the provisions of this section to summon any person to appear before him and produce books at a time and place named in the summons, and to give testimony or answer interrogatories, under oath, respecting any objects or income liable to tax or the returns thereof. The collector may summon any person residing or found within the State or Territory in which his district lies; and when the person intended to be summoned does not reside and can not be found within such State or Territory, he may enter any collection district where such person may be found and there make the examination herein authorized. And to this end he may there exercise all the authority which he might lawfully exercise in the district for which he was commissioned.

(b) *Acts Creating Liability.*—Such summons may be issued—

* * * * *

(4) *Refusal to permit examination of books.*—Whenever any person who is required to deliver a monthly or other return of objects subject to tax refuses to allow any regularly authorized Government officer to examine his books.

* * * * *

(d) *Service.*—Such summons shall in all cases be served by a deputy collector of the district where the person to whom it is directed may be found, by an attested copy delivered to such person in hand, or left at his last and usual place of abode, allowing such person one day for each twenty-five miles he may be required to travel, computed from the place of service to the place of examination; and the certificate of service signed by such deputy shall be evidence of the facts it states on the hearing of an application for an attachment. When the summons requires the production of books, it shall be sufficient if such books are described with reasonable certainty.

(e) *Enforcement.*—Whenever any person summoned under this section neglects or refuses to obey such summons, or to give testimony, or to answer interrogatories as required, the collector may apply to the judge of the district court or to a United States commissioner for the district within which the person so summoned resides for an attachment against him as for a contempt. It shall be the duty of the judge or commissioner to hear the application, and, if satisfactory proof is made, to issue an attachment, directed to some proper officer, for the arrest of such person, and upon his being brought before him to proceed to a hearing of the case; and upon such hearing the judge or the United States commissioner shall have power to make such order as he shall deem proper not inconsistent with the law for the punishment of contempts, to enforce obedience

to the requirements of the summons and to punish such person for his default or disobedience.

(26 U.S.C. 1946 ed., Sec. 3615.)

SEC. 3633. JURISDICTION OF DISTRICT COURTS.

(a) *To Enforce Summons.*—If any person is summoned under the internal revenue laws to appear, to testify, or to produce books, papers, or other data, the district court of the United States for the district in which such person resides shall have jurisdiction by appropriate process to compel such attendance, testimony, or production of books, papers, or other data.

* * * * *

(26 U.S.C. 1946 ed., Sec. 3633.)

SEC. 3651. COLLECTION AUTHORITY.

(a) *In General.*—

(1) *Within District.*—It shall be the duty of the collectors or their deputies, in their respective districts, and they are authorized, to collect all the taxes imposed by law, however the same may be designated.

* * * * *

(26 U.S.C. 1946 ed., Sec. 3651.)

SEC. 3654. GENERAL POWERS AND DUTIES RELATING TO COLLECTION.

(a) *Collectors.*—Every collector within his collection district shall see that all laws and

regulations relating to the collection of internal revenue taxes are faithfully executed and complied with, and shall aid in the prevention, detection, and punishment of any frauds in relation thereto. For such purposes, he shall have power to examine all persons, books, papers, accounts, and premises, to administer oaths, and to summon any person to produce books and papers, or to appear and testify under oath before him, and to compel compliance with such summons in the same manner as provided in section 3615.

* * * * *

(26 U.S.C. 1946 ed., Sec. 3654.)

SEC. 3711. PRODUCTION OF BOOKS.

All persons, and officers of companies or corporations, are required, on demand of a collector or deputy collector about to distrain or having distrained on any property, or rights of property, to exhibit all books containing evidence or statements relating to the subject of distraint, or the property or rights of property liable to distraint for the tax due.

(26 U.S.C. 1946 ed., Sec. 3711.)

☆ U. S. GOVERNMENT PRINTING OFFICE 1955 237429 967